to say, the applicant's claim would fail if it were to be decided on this point alone.

I now come to the order which, in view of what I have stated above, should be made in this case. In this connection in the English case of *Hine* v. *Hine* [8] which arose out of an application under section 17 of the English Married Women's Property Act, 1882, on which the provisions of section 11 of our Married Women Ordinance, 1957 are based, Lord Denning M.R. said at page 347:

"It seems to me that the jurisdiction of the court over family assets under section 17 is entirely discretionary. Its discretion transcends all rights, legal or equitable, and enables the court to make such order as it thinks fit. This means, as I understand it, that the court is entitled to make such order as appears to be fair and just in all the circumstances of the case.

..... Two principles have, however, emerged in exercising this discretion. The first is that, when it can clearly be seen that the parties intended that one piece of property or one amount of money should belong to one or the other in any event, that intention should prevail. The second principle only arises where no such intention appears."

Applying these principles, it seems to me that the proper order in this case would be: (a) a declaration that the respondent holds the 11/180th share in the land held under Certificate of Title No. 10075 for Lot 71, section 11 in the Town of Kajang together with a building thereon known as No. 164, Reko Road, Kajang, in trust for the applicant, (b) that the said land vest in the applicant, and (c) that the proper registering authority do make such memorial as may be necessary to give effect to the above orders of the court. There will therefore be an order accordingly and an order that the respondent do pay the applicant the costs of this application which are hereby assessed at $350.

*Order accordingly.*

Solicitors: *Bannon & Bailey; Kam Woon Wah.*

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## PUBLIC PROSECUTOR v. NG NEE TIAK

**[A. Cr. J. (Hashim J.) October 10, 1962]**

**[K.B. — Criminal Appeal No. 17 of 1962]**

*Criminal Law and Procedure — Acquittal and discharge — Reason for, to be recorded — Joinder of charges — Criminal Procedure Code (Cap. 6), s.164.*

*Prevention of Corruption — Charges under s.4(b), Prevention of Corruption Act, 1961, alternatively under ss.116 and 165, Penal Code — When presumption under s.14 of the Act arises.*

The accused was charged in the Sessions Court on two counts, both under section 4(b) of the Prevention of Corruption Act, 1961, alternatively sections 116 and 165 of the Penal Code. At the close of the case for the prosecution the learned President acquitted and discharged the accused. His record reads "Doubtful. Accused acquitted and discharged in both cases".

Held: (1) merely to record the word "doubtful" is not sufficient. It is ambiguous and does not convey any sense;

(2) once the prosecution has proved that any gratification has been paid the presumption under section 14 of the Act arises.

In this case the prosecution had adduced sufficient evidence for the defence to be called.

CRIMINAL APPEAL.

*Tengku Ahmad Rithauddeen* (Deputy Public Prosecutor) for the appellant.

*A. Jayadeva* for the respondent.

**Hashim J.:** The accused was charged in the Sessions Court, Kota Bharu on two counts, both under section 4(b) of the Prevention of Corruption Act, 1961, alternatively sections 116 and 165 of the Penal Code. At the close of the case for the prosecution the learned President acquitted and discharged the accused. His record reads "Doubtful. Accused acquitted and discharged in both cases". In my opinion, merely to record the word "Doubtful" is not sufficient. It is ambiguous and does not convey any sense. Was he doubtful that the prosecution had not made out a *prima facie* case against the accused in respect of the principal charges or the alternative charges? I would suggest that when a President or a Magistrate acquits and discharges an accused person at the close of the case for the prosecution he should record briefly the reasons for such acquittal. This would assist the prosecution when it comes to consider whether to appeal against the order or not.

This appeal would appear to be in respect of two cases both against the same accused, Nos. 20 and 19 of 1962. Case No. 20 of 1962 is in respect of an offence alleged to have been committed on February 9, 1962 and Case No. 19 of 1962 for an offence alleged to have been committed on March 4, 1962. The accused was first charged in the Sessions Court on April 17, 1962 in respect of both cases. I think the numbering of the cases is illogical. It should have been the other way about. The alleged offence of February 9, 1962 should have been given the No. 19 of 1962 and the alleged offence of March 4, 1962, No. 20 of 1962. In any case, I think the prosecution was wrong to separate the two cases. Accused could have been charged on two counts in the same case as both offences were alleged to have been committed within a year — section 164, Criminal Procedure Code.

The principal witness in both these cases was Senior Inspector Abdul Manaf. He stated that accused handed to him on two occasions, cash $40 and $35 respectively. On both occasions the accused said the money was "tea money". The Inspector came to Police Headquarters in Kota Bharu and reported the matter to Inspector Ali Mokhtar on both occasions. The numbers of the currency notes were recorded. The money was produced and admitted in evidence. The learned President in his six page judgment, if I understand him correctly, came to the conclusion that the failure to arrest the accused "on the spot" gave rise to the inference that the Inspector's evidence was "doubtful". Incidentally I would with respect suggest that Presidents and Magistrates should write their judgments succinctly and coherently. This would assist everybody including themselves. A long and rambling judgment would only confuse the person who reads

it. In my opinion, once the prosecution has proved that any gratification has been paid the presumption under section 14 of the Act arises.

In these two cases I think the prosecution has adduced sufficient evidence for the defence to be called. I therefore allow the appeal, reverse the order of the President and direct that the cases be retried before another President.

*Appeal allowed. Retrial ordered.*

Solicitors: *Jayadeva & Zahir.*

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## SARASPATHY & ANOR. v. KANAGASUNDRAM

[A. C. J. (Winslow J.) October 12, 1962]

[Singapore — District Court Appeal No. 13 of 1962]

*Executors and Administrators — Promissory note signed jointly and severally promising to pay bonus to employee of deceased — Personal liability of administrators — Consideration.*

In this case the appellants are the administratrix and co-administrator of the estate of one V.A.P. deceased. By a promissory note made on December 2, 1958, they acknowledged a debt of $1,000 due to the respondent as bonus for the period he had worked for the deceased. They also jointly and severally promised to pay the said sum to him or to his order within four months from that date. The respondent claimed against them as individuals who had signed the promissory note and in the lower court the learned District Judge gave judgment against them personally. On appeal the appellant contended *inter alia*: (1) there was insufficient consideration for the promise, (2) they were not personally liable for the obligations of the deceased, and (3) the learned District Judge was wrong in giving judgment against them personally as this had not been claimed by the respondent.

**Held** dismissing the appeal: (1) the promissory note in this case was sufficiently clear as regards consideration;

(2) an executor who promises to pay a debt due to the estate at a future date makes such a debt his own debt to be satisfied by his own goods. As in this case they promised to pay the debt jointly and severally they must have intended to be personally bound;

(3) the claim was made out against them personally on the promissory note, therefore, the last ground of appeal also failed.

*Cases referred to:—*

(1) *Goring* v. *Goring* 80 E.R. 9.

(2) *Childs* v. *Monins and Bowles* 129 E.R. 1045.

DISTRICT COURT APPEAL.

*A. Muthuswamy* for the appellants.

*R. Murugason* for the respondent.

**Winslow J.:** The defendants/appellants in this case are the administratrix and co-administrator of the estate of V. Anja Pillai, deceased, and although they have been sued in their respective names as such by the plaintiff/respondent it is noteworthy that the plaintiff's claim is not made against them as administratrix and co-administrator of the said estate but as individuals who had signed a promissory note dated 2nd December, 1958 acknowledging a debt of $1,000 due to the plaintiff/respondent as bonus for the period he had been working as a shop-assistant for the deceased at 363 Joo Chiat Road, Singapore. By this promissory note the two appellants also jointly and severally promised to pay the said sum to the plaintiff/respondent or to his order within four months from the date thereof.

Although Mr. Muthuswamy who appeared for the appellants listed seven grounds of appeal, his complaint substantially was that there was insufficient consideration for the promise, that the appellants were not personally liable for the obligations of the deceased, that the promissory note did not correctly set out the intentions of the parties as found by the learned District Judge, and that the learned District Judge was wrong in giving judgment against the appellants personally as this had not been claimed by the respondent.

To take the last ground first, whilst it is true that the action was brought against the appellants by name adding their representative capacities the claim itself was in fact endorsed and made out against them personally on the promissory note signed by them on 2nd December, 1958. I do not think therefore that the appeal can succeed on this ground as this was in fact a claim against the appellants personally.

The authorities of *Goring* v. *Goring* [1] and *Childs* v. *Monins and Bowles* [2] make it clear that an executor who promises to pay a debt due to the estate at a future date makes such a debt his own debt to be satisfied by his own goods. As Dallas C.J. in the latter case said, "This too is a promise which necessarily imports a payment at a future day, and an executor promising to pay a debt at a future day, makes the debt his own". Further it is not usual for executors to promise to pay a debt jointly and severally unless they intend to be personally bound. The facts in this appeal support these propositions.

As to the question of the sufficiency of consideration, to my mind, the document speaks loudly for itself and the evidence of the plaintiff/respondent which the trial Judge accepted makes it abundantly clear that this ground is badly based. As *Williams on Executors and Administrators* (13th edition) states at page 1033, "It was sufficient if the consideration could be gathered from the whole tenor of the writing; it was not necessary that it should be stated on the face of it in express terms". If it were necessary for me so to decide I would even be prepared to hold that the promissory note is sufficiently clear in this respect.

The other questions which arise in this case are purely questions of fact and the learned District Judge has given due consideration to the evidence before him and arrived at the only decision at which he could possibly have arrived.

Whilst I have been impressed by Mr. Muthuswamy's valiant efforts to resuscitate this case by his plea for an order that there should